



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

**JUL 30 2009**

REPLY TO THE ATTENTION OF:

**R-19J**

The Honorable Evan Bayh  
United States Senator  
130 South Main Street, Suite 110  
South Bend, Indiana 46601

Dear Senator Bayh:

Thank you for your letter dated July 15, 2009, on behalf of your constituents and Indiana State Representative Craig Fry, inquiring about the environmental compliance issues at the VIM Recycling, Inc. (VIM) facility located in Elkhart, Indiana.

I have reviewed your letter, including the attached letter from Representative Fry. The U.S. Environmental Protection Agency has taken aggressive action at the site to resolve the ongoing environmental compliance issues at the facility and will continue to do so until these issues are properly addressed.

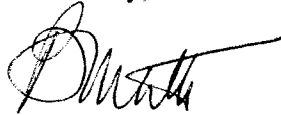
After discovering the facts and circumstances of the environmental compliance issues at the site, EPA conducted an inspection of the facility on May 5, 2009, with the Indiana Department of Environmental Management (IDEM). On May 8, 2009, EPA issued a Notice of Violation (NOV) to VIM, which cited VIM for operating in violation of the open burning provisions of the Indiana State Implementation Plan. Shortly thereafter, EPA issued an administrative consent order (Order) to VIM requiring aggressive actions at the site. The Order requires VIM to screen all of the material in the C Pile, which is the source of the open burning cited in the NOV, and remove everything from the site that is 4 inches or greater in size by December 31, 2009. Currently, VIM is taking all of the 4 inch and greater sized material to a local landfill. Additionally, VIM is required to remove no less than 1,000 cubic yards of material each week. That is the equivalent of ten semi-trailer-sized loads each week. During the removal, VIM must make sure to take all measures necessary to prevent any further open burning. Any violation of this Order is subject to a maximum penalty of \$37,500, for each day the violation occurs. Since the Order has been signed, there has been an employee of EPA or IDEM at the site five to six days a week to ensure that VIM is in compliance with these terms. This is more oversight than any refinery or power plant in the entire region receives, even though those sources generate thousands more tons of emissions.

With regard to your request to shut down the facility, EPA has two threshold concerns with this request. First, EPA believes that the ongoing removal of the recycled wood materials at the VIM facility, as ordered by EPA, is necessary to address the air emissions from the VIM

facility. Also, though occupational safety concerns are not directly within EPA's purview, removal of these large mounds of material should improve workers' safety at the site. Therefore, any action by EPA that would halt this removal would be counter-productive and could pose a much greater risk to the community. Second, EPA's authority under the Clean Air Act to take an emergency action, such as shutting down the facility, is limited. Such action is typically reserved for emergency situations where "imminent and substantial endangerment" to public health or the environment can be proven. Given the current facts and circumstances, it would be difficult for EPA to make the determination that an emergency action of this nature is necessary. Nevertheless, EPA remains very concerned with this site and will continue to monitor the situation in order to protect the health and safety of citizens in the neighboring community.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Mary Canavan or Ronna Beckmann, the Region 5 Congressional Liaisons, at (312) 886-3000.

Sincerely,

A handwritten signature in black ink, appearing to read 'B Mathur', with a long horizontal flourish extending to the right.

Bharat Mathur  
Acting Regional Administrator